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Planning Commission Staff Report

TO: PLANNING COMMISSION

FROM: CATHERINE LORBEER, AICP, PRINCIPAL PLANNER *ajl*
(480) 503-6016, CATHERINE.LORBEER@GILBERTAZ.GOV

THROUGH: EVA CUTRO, AICP, PLANNING MANAGER *EC*
(480) 503-6782, EVA.CUTRO@GILBERTAZ.GOV

MEETING DATE: APRIL 1, 2020

SUBJECT: Z19-11, LDC TEXT AMEND INDUSTRIAL HEMP: REQUEST TO AMEND THE TOWN OF GILBERT LAND DEVELOPMENT CODE, CHAPTER I ZONING REGULATIONS, DIVISION 2 LAND USE DESIGNATIONS, ARTICLE 2.9 USE REGULATIONS, TABLE 2.902 USE REGULATIONS; DIVISION 4 GENERAL REGULATIONS, ARTICLE 4.5 SUPPLEMENTAL USE REGULATIONS; DIVISION 6 USE DEFINITIONS, ARTICLE 6.1 USE DEFINITIONS; AND THE GLOSSARY OF GENERAL TERMS, RELATED TO THE REGULATION OF INDUSTRIAL HEMP.

STRATEGIC INITIATIVE: Prosperous Community

Individuals and families prosper in clean, safe communities with great schools, high-quality healthcare options and strong social connections. The proposed amendment responds to changes to state law that authorizes the commercial cultivation of industrial hemp.

RECOMMENDED MOTION

For the reasons set forth in the staff report, move to recommend approval to the Town Council for Z19-11, as requested.

BACKGROUND/DISCUSSION

History

Date	Description
<i>June 5, 2019</i>	The Planning Commission conducted a citizen review and initiated Z19-11, an amendment to the Land Development Code.
<i>February 5, 2020</i>	The Planning Commission discussed Z19-11 as a study session item.

Overview

On December 20, 2018, the federal Agricultural Improvement Act of 2018 (PL 115-334) was adopted, removing industrial hemp (“hemp”) from the definition of marijuana and allowing for the commercialization of hemp. It also expanded the definition of hemp to include seeds, all derivatives, extracts, cannabinoids (including Cannabidiol or CBD), isomers, acids, salts, and salts of isomers. Several other changes were made that will open up the commercialization of hemp. This federal law did not preempt or limit states from regulating the growing, harvesting, transporting, researching, marketing, and processing of hemp in a more stringent manner (7 U.S.C. § 1639p).

On May 14, 2018, Senate Bill 1098 was signed by Governor Ducey, allowing for commercial growth and/or processing of industrial hemp for commercial or research purposes only and directing the Arizona Department of Agriculture (AZDA) to adopt rules to oversee the licensing, production and management of industrial hemp in Arizona. There are six types of state licenses that can be applied for - Grower, Harvester, Transporter, Processor, Nursery, and Certified Laboratory.

It is important to note that AZDA’s oversight only extends from the commercial growth and cultivation of industrial hemp *up to the point of processing*. No state license is required for the sale, manufacture, or marketing of any post-processed hemp materials. For licensed processors, AZDA will focus on ensuring the licensees receive raw material that is below 0.3% THC (tetrahydrocannabinol, which is the main active ingredient of cannabis).

All other applicable laws and regulations related to manufacturing (including regulations of the Food and Drug Administration (FDA), food handling laws, and local zoning laws and codes) are out of AZDA’s scope of regulatory oversight. Consequently, local governments retain their authority to enact and enforce reasonable regulations regarding commercial industrial hemp activities consistent with federal and state laws and regulations.

It is the Town of Gilbert’s goal to remain one of the most desirable communities to live in Arizona and adopt regulations that take into account economic development and agricultural vitality, while ensuring the health, safety and welfare of the community. In light of the new laws, staff is requesting Planning Commission feedback on the type of changes to the Land Development Code (LDC) that may be appropriate to address industrial hemp activities.

The proposed text amendment is based on the model ordinance of the League of Arizona Cities and Towns, along with input from internal staff from Police, Fire, Code Compliance, Legal, Water and Wastewater divisions. Staff also queried other municipalities for comparable regulations. Chandler, Apache Junction, Peoria, Queen Creek, Youngtown, and Maricopa County have responded that they do not have any existing or proposed regulations in place for industrial hemp activities. On December 9, 2019, Coolidge adopted an ordinance allowing hemp processing as a permitted use in General Industrial zones and requiring a Conditional Use Permit as a secondary use in Garden Industrial zones and as a secondary use to a single family detached dwelling in Agricultural zones.

1. Add New Use

The proposed text amendment would add the *Industrial Hemp* use to LDC Table 2.902 and would allow the use by right in the Light Industrial (LI) and General Industrial (GI) zoning districts.

Proposed Zoning Code Amendment

Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.9 Use Regulations, Table 2.902 Use Regulations (additions in ALL CAPS; deletions in ~~strikeout~~):

Use Category		
	LI	GI
Agricultural		
* * *		
INDUSTRIAL HEMP	P	P
Medical Marijuana Facilities:		
<i>Medical Marijuana Designated Caregiver Cultivation Location</i>	P	
<i>Medical Marijuana Offsite Cultivation Site</i>	U	U
* * *		

2. Hemp Locations and Operations

A new section is proposed under LDC Article 4.5 to address where *Industrial Hemp* uses may be located, developed, and operated. The new use must comply with state licensing, meet separation requirements, and allow fire and code compliance inspections.

Proposed Zoning Code Amendment

Chapter I Zoning Regulations, Division 4 General Regulations, Article 4.5 Supplemental Use Regulations (additions in ALL CAPS; deletions in ~~strikeout~~):

Article 4.5 Supplemental Use Regulations

Sections

- 4.501 Applicability
- 4.502 Home Occupations
- 4.503 Residential Day Care

- 4.504 Group Homes for the Handicapped
- 4.505 Place of Worship
- 4.506 Vacation or Short-Term Rentals
- 4.507 Farm Stands
- 4.508 Animal Services
- 4.509 Cemeteries
- 4.5010 Non-Traditional Business Uses
- 4.5011 Sexually-Oriented Businesses
- 4.5012 Temporary Uses
- 4.5013 Temporary Structures
- 4.5014 Medical Marijuana Dispensaries and Offsite Cultivation Sites
- 4.5015 Recovery Residence
- ~~4.5016 Miscellaneous Provisions~~
- 4.5016 INDUSTRIAL HEMP
- 4.5017 MISCELLANEOUS PROVISIONS

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4.5016 INDUSTRIAL HEMP

INDUSTRIAL HEMP USES SHALL BE LOCATED, DEVELOPED, AND OPERATED IN COMPLIANCE WITH THE FOLLOWING STANDARDS:

- A. **PURPOSE AND INTENT.** THIS SECTION IS ADOPTED TO PROMOTE THE HEALTH, SAFETY, AND WELFARE OF THE GILBERT COMMUNITY BY ENACTING REASONABLE REGULATIONS FOR THE COMMERCIAL CULTIVATION OF INDUSTRIAL HEMP BY REQUIRING COMPLIANCE WITH ZONING LAWS.
- B. **APPLICABILITY.** THE MINIMUM REQUIREMENTS OF THIS SECTION SHALL APPLY TO ALL INDUSTRIAL HEMP USES LOCATED IN ANY ZONING DISTRICT.
- C. **COMPLIANCE WITH STATE LICENSING REQUIREMENTS.**
 - 1. IT SHALL BE UNLAWFUL FOR ANY PERSON TO GROW, HARVEST, TRANSPORT OR PROCESS INDUSTRIAL HEMP, OR TO USE ELIGIBLE SEED AND PROPAGATIVE MATERIALS TO PRODUCE AN INDUSTRIAL HEMP CROP OR PLANT, IN THE TOWN OF GILBERT WITHOUT HAVING FIRST OBTAINED A VALID LICENSE FROM THE STATE PURSUANT TO A.R.S. § 3-311 *ET SEQ.* AND TITLE 3, CHAPTER 4, ARTICLE 10 OF THE ARIZONA ADMINISTRATIVE CODE.
 - 2. IT SHALL BE UNLAWFUL FOR A PERSON TO GROW, HARVEST, PROCESS, OR STORE INDUSTRIAL HEMP IN ANY RESIDENTIAL DWELLING UNIT PURSUANT TO TITLE 3, CHAPTER 4, ARTICLE 10 OF THE ARIZONA ADMINISTRATIVE CODE.

3. THE APPLICANT SHALL NOTIFY THE TOWN OF GILBERT WITHIN 48 HOURS IF THE STATE IMPOSES A CORRECTIVE ACTION PLAN ON THE APPLICANT OR SUSPENDS OR REVOKES THE APPLICANT’S LICENSE.

D. *INDUSTRIAL HEMP SITE REGULATIONS.*

1. INDUSTRIAL HEMP IS SUBJECT TO THE FOLLOWING CONDITIONS AND LIMITATIONS:
 - A. INDUSTRIAL HEMP SHALL ONLY BE PERMITTED IN THE LIGHT INDUSTRIAL (LI) AND GENERAL INDUSTRIAL (GI) ZONING DISTRICTS.
 - B. INDUSTRIAL HEMP SITES MUST MEET THE MINIMUM SEPARATION REQUIREMENTS SET FORTH IN TABLE 4.5016: INDUSTRIAL HEMP SEPARATION REQUIREMENTS. MEASUREMENTS SHALL BE MADE IN A STRAIGHT LINE IN ANY DIRECTION, FROM THE PARCEL LINE OF THE PROPOSED INDUSTRIAL HEMP SITE TO THE CLOSEST PARCEL LOT LINE OF THE USES SET FORTH IN TABLE 4.5016. A MINIMUM SEPARATION REQUIREMENT DOES NOT APPLY TO ANY USE OR USE CLASSIFICATION DESCRIBED IN TABLE 4.5016 THAT IS SEPARATED FROM AN INDUSTRIAL HEMP SITE BY A FREEWAY.

TABLE 4.5016: INDUSTRIAL HEMP SEPARATION REQUIREMENTS

USE OR USE CLASSIFICATION	SEPARATION REQUIREMENT (FEET)
CEMETERY	1,000
DAY CARE CENTER, PUBLIC OR PRIVATE	1,000
PUBLIC OR PRIVATE PARK	1,000
PLACE OF WORSHIP	1,000
SCHOOLS, PUBLIC OR PRIVATE	1,000
RESIDENTIAL ZONING DISTRICT BOUNDARY	500

- C. EXCEPT AS OTHERWISE ALLOWED UNDER STATE LAW, DISPOSAL OF INDUSTRIAL HEMP WASTE SHALL NOT BE ALLOWED ON PUBLIC PROPERTY, IN ANY TOWN OF GILBERT REFUSE OR RECYCLING CONTAINER, UNLESS EXPRESSLY AUTHORIZED BY THE TOWN OF GILBERT. IN ADDITION, NO PERSON SHALL DISCHARGE OR CAUSE TO BE DISCHARGED TO A SEWER SYSTEM OR OTHER PUBLIC SYSTEM ANY WASTE THAT MAY HAVE AN ADVERSE OR HARMFUL EFFECT ON THE SYSTEM (GILBERT MUNICIPAL CODE, CHAPTER 66, ARTICLE VI, SECTION 66-231), GILBERT PERSONNEL OR EQUIPMENT, EFFLUENT QUALITY, PUBLIC OR PRIVATE PROPERTY; OR WHICH MAY OTHERWISE ENDANGER THE PUBLIC, THE ENVIRONMENT OR CREATE A PUBLIC NUISANCE, OR WHICH EXCEEDS LIMITATIONS AS SET BY THE STATE; OR CAUSE THE SYSTEM TO VIOLATE STATE OR FEDERAL REGULATIONS OR PERMITS; OR ADVERSELY AFFECT

WATER RECLAMATION, WATER REUSE OR SLUDGE DISPOSAL OR AIR QUALITY.

- D. INDUSTRIAL HEMP ACTIVITIES, STORAGE, AND DISCHARGES SHALL NOT EMIT SMELLS AND ODORS BEYOND THE INDUSTRIAL HEMP SITE OR BEYOND TEN (10) FEET OF THE EXTERIOR OF AN INDUSTRIAL HEMP SITE BUILDING, WHICHEVER DISTANCE IS LESS, WHICH CAN BE DETECTED OUTSIDE BY A PERSON WITH A “NORMAL SENSE OF SMELL” AND ARE NOT GENERALLY FOUND IN A RESIDENTIAL ENVIRONMENT, EXCEPT DURING PERIODS WHILE A DOOR IS OPEN FOR THE PURPOSE OF TRANSPORTING INDUSTRIAL HEMP, NOT TO EXCEED FIFTEEN (15) MINUTES PER PERIOD.
- E. INDUSTRIAL HEMP SITES SHALL ALLOW INSPECTIONS OF THE EXTERIOR PREMISES BY GILBERT CODE COMPLIANCE OR A DESIGNEE AT ANY TIME DURING REGULAR BUSINESS HOURS AND/OR AS STATED IN GILBERT MUNICIPAL CODE, CHAPTER 66, ARTICLE VI, SECTION 66-179.
- F. INDUSTRIAL HEMP SITES SHALL COMPLY WITH ALL MUNICIPAL CODES AND ORDINANCES.
- G. NO VEHICLE USED TO TRANSPORT INDUSTRIAL HEMP TO OR FROM AN INDUSTRIAL HEMP SITE SHALL PARK IN A RESIDENTIAL ZONE OR BE LEFT UNATTENDED ON ANY PUBLIC STREET, SIDEWALK, ALLEY OR OTHER PUBLIC RIGHT-OF-WAY IN THE TOWN OF GILBERT. NON-COMPLIANT VEHICLES SHALL BE SUBJECT TO GILBERT MUNICIPAL CODE, CHAPTER 62, TRAFFIC AND VEHICLES.

4.5016 ~~Miscellaneous Provisions~~

4.5017 MISCELLANEOUS PROVISIONS

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3. Definitions

In addition to the *Industrial Hemp* use definition, changes are proposed to clarify that commercial and non-commercial crop raising does not include hemp.

Proposed Zoning Code Amendment

Chapter I Zoning Regulations, Division 6 Use Definitions, Article 6 Use Definitions (additions in ALL CAPS; deletions in ~~strikeout~~):

Article 6.1 Use Definitions

* * *

Crop and Animal Raising, Commercial. The growing of tree, vine, field, forage, and other plant crops, intended to provide food or fiber, and the keeping, grazing, or feeding of fowl or animals

for animal products, animal increase, and value increase for profit. THIS CLASSIFICATION EXCLUDES INDUSTRIAL HEMP.

Crop Raising, Non-Commercial. The growing of tree, vine, field, forage, and other plant crops, intended to provide for food or fiber not for profit. THIS CLASSIFICATION EXCLUDES INDUSTRIAL HEMP.

* * *

INDUSTRIAL HEMP. THE GROWING, HARVESTING, TRANSPORTING, PROCESSING OR STORAGE OF INDUSTRIAL HEMP, OR THE USE OF ELIGIBLE SEED AND PROPAGATIVE MATERIALS TO PRODUCE INDUSTRIAL HEMP, AS AUTHORIZED AND LICENSED BY THE STATE OF ARIZONA.

* * *

4. Add Related Terms

State law includes several terms related to *Industrial Hemp*. The proposed code amendment will add and cross reference those terms to make the LDC more user friendly.

Proposed Zoning Code Amendment

Chapter I Zoning Regulations, Glossary of General Terms (additions in ALL CAPS; deletions in ~~strikeout~~):

* * *

INDUSTRIAL HEMP RELATED TERMS

GROWER. AN INDIVIDUAL, PARTNERSHIP, COMPANY, OR CORPORATION THAT PROPAGATES INDUSTRIAL HEMP UNDER TITLE 3, CHAPTER 2, ARTICLE 4.1 OF THE ARIZONA REVISED STATUTES AND TITLE 3, CHAPTER 4, ARTICLE 10 OF THE ARIZONA ADMINISTRATIVE CODE.

HARVESTER. AN INDIVIDUAL, PARTNERSHIP, COMPANY, OR CORPORATION THAT IS LICENSED BY THE STATE OF ARIZONA DEPARTMENT OF AGRICULTURE TO HARVEST INDUSTRIAL HEMP FOR A LICENSED GROWER.

HEMP PRODUCTS. ALL PRODUCTS MADE FROM INDUSTRIAL HEMP, INCLUDING CLOTH, CORDAGE, FIBER, FUEL, GRAIN, PAINT, PAPER, CONSTRUCTION MATERIALS, PLASTICS, AND BY-PRODUCTS DERIVED FROM STERILE HEMP SEED OR HEMP SEED OIL. HEMP PRODUCTS EXCLUDE ANY PRODUCT MADE TO BE INGESTED EXCEPT FOOD MADE FROM STERILE HEMP SEED OR HEMP SEED OIL.

HEMP SEED. ANY VIABLE CANNABIS SATIVA L. SEED THAT PRODUCES AN INDUSTRIAL HEMP PLANT THAT IS SUBJECT TO TITLE 3, CHAPTER 2, ARTICLE 4.1 OF THE ARIZONA REVISED STATUTES AND TITLE 3, CHAPTER 4, ARTICLE 10 OF THE ARIZONA ADMINISTRATIVE CODE.

INDUSTRIAL HEMP. ANY VIABLE CANNABIS SATIVA L. AND ANY PART OF SUCH A PLANT, WHETHER GROWING OR NOT, WITH A DELTA-9 TETRAHYDROCANNABINOL CONCENTRATION OF NOT MORE THAN 0.300% PERCENT ON A DRY-WEIGHT BASIS.

INDUSTRIAL HEMP SITE. THE LOCATION IN WHICH A GROWER, HARVESTER, TRANSPORTER, OR PROCESSOR POSSESSES A CROP, A HARVESTED CROP, OR HEMP SEED.

NURSERY. REAL PROPERTY OR OTHER PREMISES ON OR IN WHICH INDUSTRIAL HEMP STOCK IS PROPAGATED, GROWN, OR CULTIVATED AND INTENDED FOR SALE, GIFT, OR PROPAGATION, EITHER CULTIVATED OR COLLECTED IN THE WILD, OR FROM WHICH SOURCE INDUSTRIAL HEMP STOCK IS OFFERED FOR DISTRIBUTION OR SALE.

PROCESSOR. AN INDIVIDUAL, PARTNERSHIP, COMPANY OR CORPORATION THAT IS LICENSED BY THE STATE OF ARIZONA DEPARTMENT OF AGRICULTURE TO RECEIVE INDUSTRIAL HEMP FOR PROCESSING INTO HEMP PRODUCTS OR HEMP SEED.

TRANSPORTER. AN INDIVIDUAL, PARTNERSHIP, COMPANY OR CORPORATION THAT IS LICENSED BY THE STATE OF ARIZONA DEPARTMENT OF AGRICULTURE TO TRANSPORT INDUSTRIAL HEMP FOR A STATE-LICENSED GROWER TO A PROCESSOR.

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PUBLIC NOTIFICATION AND INPUT

A notice of public hearing was published in a newspaper of general circulation in the Town, and an official notice was posted in all the required public places within the Town per the requirements of the Land Development Code Article 5.205.

A Citizen Review was held for the proposed LDC amendment at the Planning Commission study session on June 5, 2019. No citizens provided public comment on this item. At the time of this report, Staff has not received any comment from the public.

PLANNING COMMISSION STUDY SESSION

The Planning Commission discussed the proposed text amendment during the February 5, 2020 study session. Overall, the commissioners had positive response to the proposed amendment. There was some concern about hemp smelling like marijuana and how those odors might affect adjacent properties. Staff advised that the use may be better suited for industrial areas due to odors and as proposed, the industrial hemp could be grown indoors or outdoors.

A commissioner said he thought the proposal was good and that it was important from an agricultural vantage point related to the water intensity and utilizing hemp as a paper or rope product versus other items that have less of a circular economy impact. Another commissioner

noted the proposed separation requirements from schools and other facilities, and staff explained the separation applies to the cultivation, growing, harvesting, and processing of industrial hemp.

A commissioner asked about what other cities are doing and what was happening at the state level. Staff noted limited action so far by other cities, but that the state has encouraged cities and towns to adopt laws. Staff advised that the state considers this a pilot program, which does preserve local authority over zoning because it is new and because of the potential issue with storage and odors. Another commissioner expressed support for the idea because it revitalizes the agricultural industry in Arizona. Please see Attachment 2 for the minutes from the Planning Commission Study Session.


REASONS FOR THE RECOMMENDATION

1. The proposed zoning text amendment conforms to the General Plan as amended, any applicable Specific Area Plan, neighborhood, or other plan and any overlay zoning district.
2. All required public notice has been conducted in accordance with applicable state and local laws.
3. All required public meetings and hearings have been held in accordance with applicable state and local laws.
4. The proposed zoning text amendment supports the Town's strategic initiative for a Prosperous Community. It supports the motto "Gilbert: Clean, Safe, Vibrant."

STAFF RECOMMENDATION

For the following reasons: the proposed regulations will provide for better Land Development Code clarity, enhance economic development opportunities and maintain the public's welfare, conforms to the intent of the General Plan, and all required public notice and meetings have been held, the Planning Commission moves to recommend approval of Z19-11, a request to amend the Land Development Code related to the regulation of industrial hemp: establishing a purpose; setting forth definitions; requiring compliance with state licensing requirements; and establishing industrial hemp site regulations.

Respectfully submitted,


Catherine Lorbeer, AICP
Principal Planner / Zoning Administrator

Attachments and Enclosures:

- 1) Notice of Public Hearing
- 2) Minutes from the Planning Commission Study Session on February 5, 2020

**Z19-11: LDC Text Amendment - Industrial Hemp
Attachment 1 - Notice of Public Hearing**



NOTICE OF PUBLIC HEARING

PURSUANT TO ARS Sections 39-204 & 9-462.04, NOTICE IS HEREBY GIVEN OF PUBLIC HEARING in the Town of Gilbert, Arizona, relating to the following requests for changes in land use regulations:

Z19-11 LDC TEXT AMEND-INDUSTRIAL HEMP: Request to amend the Town of Gilbert Land Development Code, Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.9 Use Regulations; Division 4 General Regulations, Article 4.5 Supplemental Use Regulations; Division 6 Use Definitions, Article 6.1 Use Definitions; and the Glossary of General Terms, related to the regulation of industrial hemp. The effect of the amendment will be to establish a purpose, set forth definitions, require compliance with state licensing requirements, and establish site regulations for the growing, cultivation, processing, harvesting and/or transporting of industrial hemp.

The applications and project files may be viewed by the public Monday through Thursday, 7:00 am to 6:00 pm at the Town of Gilbert, Planning and Development Services office located at 90 East Civic Center Drive, Gilbert, AZ. Written comments may be sent to Town of Gilbert, Planning and Development Services, 90 East Civic Center Drive, Gilbert, AZ 85296. Written comments may also be submitted at the public hearing. Any interested person may appear and be heard at the following public hearing:

**Planning Commission: Wednesday, April 1, 2020 at 6:00 p.m.
Gilbert Municipal Center, Council Chambers, 50 East Civic Center Drive, Gilbert, AZ**

Lisa Maxwell, Town Clerk

Z19-11: LDC Text Amendment - Industrial Hemp

Attachment 2 - Minutes from the Planning Commission Study Session on February 5, 2020

Ms. Temes provided an overview of the surrounding area. A mile to the north at Queen Creek and Val Vista there is a small shopping center with a Planet Fitness, Jack in the Box, BoSa Donuts, other restaurant services, hair salon, veterinary services and a bar/restaurant. A mile to the south at Chandler Heights and Val Vista is a vacant commercial piece which has never come in to be developed. Two to three miles to the west on Ocotillo there is a large shopping center in Chandler with a Fry's grocery, Sprouts, and other significant restaurant uses. Three miles to the southeast is another major Fry's center and services. There is a lot of large lot residential in the area and the newer subdivisions have filled in with smaller lots. There is Weinberg Elementary, a new elementary school that was discussed in the previous agenda item, and Perry High School about a mile or so to the northeast. There are a lot of residents in the area and a lot of traffic. There is an ongoing CIP project for improvements to Val Vista Drive in this corridor. A mile to the south, a project was approved at the former Hamstra Dairy with a large PAD and rezoning which is currently under construction. It is not known presently how the residential >2-3.5 DU/Acre surrounding this site will be developed as there has been no formal submittal, so staff cannot speak to how this would relate to the surrounding community.

Vice Chair Bloomfield wanted to make sure all of the available services were being taken into consideration. Overall, from a General Plan and zoning case, he was in favor of the project. It is a beautiful facility and they have been a great neighbor in Gilbert.

Commissioner September noted that the 54' proposed height deviation was only for 25% of the roofline for the entryway and second floor equipment. He asked where on the roof that equipment would be located.

Ms. Temes believed the equipment was centralized and aligned with the stairwell that had the modification request. The modification is slightly off center to the west toward the back of the building over the basketball court. She provided a rendering showing that location to the Commission for reference.

Chair Andersen asked if the purpose of the additional height was for articulation of the architecture.

Ms. Temes believed it also had to do with clearance for the court.

Commissioner September's concern was with any visual impact that the height deviation may have on the residential, although he understood it would be more towards the parking area.

Commissioner Cavenee liked that this development was coming and felt it will be a quality project based on their history. We do not often see a move from single-family to Commercial and he felt this was a great move for the area to create some additional services. He was also worried whether the vertical variance was for an architectural piece or actually had to do with capturing the enclosed space, which it does. It was a little concerning, although given that it is offset a little bit more and the point is visual impedance, then it is probably okay. It will be interesting to see how the stairwell step-back plays in. If it is done right, even though it does impede that step-back, it still is not visually problematic and he felt it would be fine. He encouraged the architect to pay close attention to how that is treated. There can be a more detailed look at that in the DR case.

Ms. Temes stated, as noted by Commissioner September, the change in elevation will add some additional interest and articulation to the building. With a very large building adjacent to potential future residential, there is often the concern with people looking out over the residential. On a basketball court, we do not anticipate windows overlooking the residential backyards. In this case, staff feels going a little taller over the court is fairly benign.

6. Z19-11 CULTIVATION OF INDUSTRIAL HEMP: Discussion of amendment to the Town of Gilbert Land Development Code, Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.9 Use Regulations; Division 4 General Regulations, Article 4.5 Supplemental Use Regulations; Division 6 Use Definitions, Article 6.1 Use Definitions; and the Glossary of General Terms, related to the cultivation of industrial hemp.

Catherine Lorbeer, Principal Planner, advised that last June, an amendment to the Land Development Code (LDC) was initiated concerning industrial hemp. This was in response to recent changes in federal law and at

the state level that allowed for the commercialization of hemp. With the new state law provisions, local government does still retain some authority to regulate the use and that is the reason for the proposed amendment. Hemp is a Cannabis product often used to make fiber, oil, rope, fabric, paper, and fiberboard. The key difference between hemp and marijuana is that hemp naturally has almost no THC, which is the component that gives marijuana its psychoactive effect. Hemp flowers basically contain 0.3% THC.

Staff has reviewed the model ordinance that Arizona Cities and Towns had put together and started drafting some possible requirements adapted to Gilbert's needs. So far, there has not been another jurisdiction in the Valley that has attempted to address this topic. Staff is proposing that industrial hemp would be a permitted use in Light Industrial (LI) and General Industrial (GI), with some similarities to our medical marijuana facilities. A separation requirement is being considered that would be similar to how we handle medical marijuana facilities in order to address odors as some of these facilities use hazardous or flammable chemicals. That factor was considered in proposing this in employment districts as opposed to other districts.

A use classification would be created for industrial hemp to match state law for the growing, harvesting, transporting, processing, or storage of industrial hemp or the use of eligible seed and propagative materials to produce industrial hemp, as authorized and licensed by the State of Arizona. There are additional state bills that have been introduced that may provide more guidance at the state level. Staff continues to research the topic and standards and is coordinating with internal departments such as Water, Wastewater, Police, Fire, and Code Compliance.

Staff is requesting feedback from the Commission regarding the draft LDC amendment regarding industrial hemp.

COMMISSION COMMENTS/QUESTIONS:

Commissioner Smith asked whether a farmer who has an interest in growing this crop would have to approach this body for a permit.

Ms. Lorbeer stated a license would be needed from the state to cultivate and grow industrial hemp. For the Town's purposes, it would need to be located in a land use category where cultivation of industrial hemp would be permitted and a business license may be needed or a building permit for any structures.

Commissioner September asked if hemp smelled like marijuana and whether it would be grown outside or indoors.

Ms. Lorbeer advised that hemp could be grown indoors or outdoors if allowed in the Light Industrial district. Some of the facilities she has heard of have been primarily indoors. It does have an odor similar to the growing of marijuana and there is some concern about how those odors might affect adjacent properties and why that use may be better suited for an employment or industrial area.

Commissioner Mundt noted Gilbert has historically been a farming community and still has a number of agricultural growers. He felt a farmer would likely utilize a zoning change for their land in order to switch to growing hemp. With the draft amendment, would a zoning change still be required for their land even with a state license?

Ms. Lorbeer stated the Town would establish what zoning districts the use would be permitted. If someone wanted to propose that use in an area that was not currently zoned for that use, they certainly have the right to ask the question. It would then go through an amendment process to determine whether that land use in general of a Light Industrial or General Industrial is appropriate.

Commissioner Mundt felt that made sense. He thought the draft was good and it is important from an agricultural vantage point to both the water intensity and utilizing hemp as a paper or rope product versus other items that have a lot less of a circular economy impact. He felt the amendment was a very forward-thinking movement. As an environmental engineer, he assured that no amount of hemp would get a person stoned.

Commissioner Cavenee noted in the proposed language distance restrictions to schools and other facilities. He understood that to be for the sale of hemp products. Would the cultivation and agricultural side fall under different language or does this apply to all aspects of hemp.

Ms. Lorbeer stated this would apply to the cultivation, growing, harvesting and processing of hemp, actually creating the products. The sale of those products would simply follow the same process for the sale of any other product.

Vice Chair Bloomfield felt staff did a great job on the proposed amendment. Since no one else in the Valley is working on this topic, he asked if Gilbert was just the last farming vestiges in the Valley or was there another interest that is pushing this along?

Ms. Lorbeer did not know why other jurisdictions may or may not be interested in provisions for industrial hemp. Staff has reached out to surrounding areas and they have no plans to proceed at this time. She has heard rumors that it may at the state level be allowed where we won't have a zoning say. Perhaps other cities are waiting to see what happens at the state level. We want to be ready in any event and we can always make changes in the future if needed. There was no particular business that has reached out to her with an interest in growing hemp.

Commissioner Mundt asked if a farmer gets a permit from the state, without this amendment, would that farmer currently be allowed to grow hemp and are we now putting restrictions on that?

Ms. Lorbeer stated through internal discussions it has been determined that the cultivation of hemp would be prohibited because we don't currently have anything in place for it. If the code does not speak to it, then it would be prohibited.

Commissioner Mundt asked if a current agricultural use would be specific as to crops or can it be any crop such as soybeans or cotton? If the state allows the growing of hemp, he was concerned about creating additional impediments to business for our community.

Ms. Lorbeer stated our existing definitions for crop raising, commercial and non-commercial, are more general in nature. Because industrial hemp is newly allowed to be pursued both at the federal and state level, and since we don't have provisions for it today, we wanted to be proactive and have something in place to determine if such a request is the right fit for Gilbert. Staff would propose language to make it even clearer in the code that those two categories do not include industrial hemp and that there is a separate use definition to match state law provisions.

Commissioner Mundt asked if that meant someone would or would not be able to grow hemp if the state allows it, without the proposed amendment.

Nancy Davidson, Assistant Town Attorney, advised that the state considers this a pilot program which does preserve local authority over zoning because it is new and because of the potential issue with storage and odors, and that the state encouraged cities and towns to adopt laws. Based on the outcome of the pilot program, the state would determine at the local level whether it resolved any potential issues. There were a lot of concerns, not just about odors, but cross-pollination, which was a concern in Santa Cruz County. The state is leaving the more local issues to the cities and town and will revisit the program. There is a bill being proposed in the legislature now that would prohibit the local authority over industrial hemp.

Commissioner Mundt noted if that bill passed, this would be a moot point.

Attorney Davidson stated there is another potential bill for the legalization of recreational marijuana and there is a citizen petition that is circulating in support of that. The state is also trying to give a heads up to local cities and towns that right now it is limited to industrial hemp that does not have THC. At some point, there might be agricultural sites for growing recreational marijuana. If it preserves local authority and since it is pretty new in Arizona, we are taking a pretty limited approach to keep it in a specific area where it might not have as much of an impact on residential neighborhoods. In other states, some cities are very restrictive as to how it is harvested and where it can be stored.

Commissioner Mundt appreciated that clarification.

Chair Andersen compared industrial hemp to a liquor license, which has several classifications based on sales. Would there be a minimum requirement of hemp that would need to be cultivated each year to maintain industrial hemp or is that term being used loosely?

Ms. Lorbeer was not aware of any particular quantities that are being specified through the state licensing and has not come across that in any of the materials that have been read up to this point.

Chair Andersen liked the idea because it revitalizes the agricultural industry in Arizona. Gilbert was such a strong farming community for so long, although much of it is developed now. We just don't have a lot of farming jobs in this town anymore. If Gilbert can be one of the first towns to get our foot through that door and bring that industry back to Gilbert, he thought it was a great idea.

7. Discussion of Regular Meeting Agenda:

There was discussion on moving items 17. Z19-16 Rivulon, 21. GP19-13 Victory Plaza, and 22. Z19-25 Victory Plaza to the Consent Agenda, if there are no requests to speak from the public. There were no objections.

There was a five-minute break before the Planning Commission Regular Meeting.

ADJOURN STUDY SESSION

With no further business before the Commission, Chair Andersen adjourned the Study Session at 6:08 p.m.



Brian Andersen, Chairman

ATTEST:



Dana Desing, Recording Secretary